No. (1)

Supreme Court, U.S.
FILED
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In The Supreme Court of the United States

SHERRY D. BATTLE,

Petitioner,

v.

THE VIRGINIA - PILOT, A DIVISION OF LANDMARK COMMUNICATIONS, INCORPORATED KAY TUCKER ADDIS, and MARK DAVIS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Virginia

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Under the First and Fourteenth Amendments to the United States Constitution, can a State dismiss a civil litigant's case and award sanctions to a newspaper for filing a libelous suit because she, a public figure, failed to prove actual malice by clear and convincing evidence that –the statement was made with knowledge of its falsity or with reckless disregard of whether it was true or false-on the newspaper's dumurrer?

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APPENDIX

APPENDIX A	Order of the Supreme Court of Virginia filed a on June 17, 2004.
APPENDIX B	Order of the Supreme Court of Virginia filed on April 14, 2004.
APPENDIX C	Order of the Circuit Court of the City of Norfolk entered on October 20, 2003.

Petitioner Sherry D. Battle ("Battle") respectfully requests that a writ of certiorari be issued to review the order of the Supreme Court of Virginia.

OPINION BELOW

The Order of the Supreme Court of Virginia ("Virginia Supreme Court") denied the petition for appeal on April 14, 2004(Record No.: 040162). The opinion was not published. The petitioner filed a petition to rehear and it was denied on June 17, 2004. The Circuit Court of the City of Norfolk, Case No. L03-233, entered its Order on October 20, 2003.

STATEMENT OF JURISDICTION

The Order of the Virginia Supreme Court was entered on June 17, 2004.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (a).

CONSTITUTIONAL, PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides that:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of guerances."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that: No State shall deprive any person of life, liberty, or property without due process of the law."

STATEMENT OF THE CASE

To fully appreciate the significance of the issue presented in this case, it is essential to consider the procedural background.

On January 30, 2003, Battle, the petitioner, filed a defamation suit against the defendants, the

respondents, based on articles appearing in their newspaper on January 30, 2002 and August 2, 2002.

On January 30, 2002, the defendants republished in its newspaper, The Virginian-Pilot, the following defamatory false statement about Battle, a married woman and businesswoman:

"Following Judge Luther C. Edmonds' resignation, (former Delegate) William P. Robinson, a former close friend of Edmonds, announced that Edmonds was forced out because he had committed an ethical violation by handling cases involving Battle. She was a bail bondwoman at the time and was allegedly having an affair with Edmonds" Amended Motion For Judgment, paragraph 90.

On August 2, 2002, the defendants published in The Virginian-Pilot the following about Battle:

"The campaign of Sherry Battle, 41, is plague by earlier business and personal incidents. For an example, in 1994, the one time bail bondwoman

chased a bondman through the courthouse lobby with a stun gun; the disorderly conduct conviction stemming from the charged was later overturned by the state of appeals court, ruling that she was not tried quickly enough. Voters should steer clear of her" Amended Motion For Judgment("AMFJ"), paragraph 106.

The defendants filed a demurrer, among other things, and over Battle's objection, on June 11, 2003, the trial court sustained the defendants demurrer, However, the trial court granted Battle's leave to amend her Motion For Judgment.

Battle timely filed her Amended Motion For Judgment and again the defendants moved to dismiss and moved the trial for sanction , pursuant to an Order of Pre-Filing Injunction("Order"), of October 18, 2002 which Battle contended that it required her to obtain prior approval of suits instituted in the State's courts against, the named defendants in the then suit, judges and judicial officials of the Norfolk Circuit Court.

On September 26, 2003, the defendants argued and moved the trial court to dismiss and for sanctions against Battle for violating the trial court Order. Over Battle's Objections, the trial court granted the defendants' motion, which included an award of attorney fees in the amount of $7, 294.50. Order of October 20, 2003. After the September 26, 2003 hearing, Battle filed a motion, requesting the trial court to reconsider its ruling and stay matters until Judge Alfred P. Swersky could have an opportunity to declare and clearify its Order of October 18, 2002. The Norfolk Circuit Court Clerk intervened and the trial court denied Battle's motion.

On October 20, 2003, the trial court, over Battle's objections, granted the defendants' demurrer, motion to dismiss and motion for sanctions. Battle appealed to the Virginia Supreme Court, and the appeal was denied on April 14, 2003. Later, the Virginia

Supreme Court denied Battle's petition to rehear the case on June 17, 2004.

REASONS FOR GRANTING THE WRIT

I. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULING THAT A PUBLIC FIGURE MUST PROVE ACTUAL MALICE-THAT THE STATEMENT WAS MADE WITH KNOWLEDGE OF ITS FALSITY OR WITH RECKLESS DISREGARD OF WHETHER IT WAS TRUE OR FALSE-BY CLEAR AND CONVINCING EVIDENCE BEFORE DAMAGES CAN BE RECOVERED.

In the case at bar, the trial court erred in deciding the issue of malice by clear and convincing evidence on the defendants' demurrer. The determination of actual malice is one of fact for the jury, and it was not proper for the trial court to decide the issue of actual malice on a demurrer. See. Chapin v.

Knight-Ridder, 993 F. 2d 1087, 1104(4th Cir. 1993); APPENDIX D, Luther C. Edmonds v. The Virginian-Pilot, et al. At Law No.: L02-248(Draffon, J.(12/4/02) Norfolk Circuit Court.

It is well settled that "A demurrer admits that all material facts which are well pleaded are true. Facts well pleaded, and therefore admitted, (1) are facts expressly alleged, (2) facts which are by fair intendment impliedly allegedly alleged, (3) and facts which may be fairly and justly inferred from the facts alleged." Ames v. American National Bank, 163 Va. 1, 34(1934). A demurrer admits as true all averments of material facts which are sufficiently pleaded. Burks, Pleadings And Practice(4th ed. 1952), Sec. 213. See APPENDIX E, Judge Draffon's Ruling of October 7, 2002, p. 3

A finding of actual malice requires that the statement be made with knowledge that it was false or with reckless disregard of whether it was false or not.

New York Times v. Sullivan, 376 U.S. 254, 279-80(1964); Gazette Inc. v. Harris, 229 Va. 1, 8(1985). This Court, in New York Times v. Sullivan, supra, held that a State cannot under the First and Fourteenth Amendments award damages to a public official for defamatory falsehood relating to his official conduct unless he proves actual malice-that the statement was made with knowledge of its falsity or with reckless disregard of whether it was true or false.

In the case at bar, the defendants' demurrer admits all facts which are expressly impliedly, fairly and justly inferred from the alleged with regard to actual malice. Battle sufficiently pleaded facts to show that the defendants republished the October 11, 1996 statement with actual malice.

On October 11, 1996, The Virginian-Pilot("Pilot") published a story entitled," Delegate Disputes Judge Edmonds; Account Of Why He Left The Bench. 'An Ethical Violation Forced The Judge To Resign,'

Robinson Says." The Pilot published that "Robinson... says a judicial commission investigating Edmonds had evidence that Edmonds improperly heard cases involving a woman with whom he'd a relationship." AMFJ, 27. The Pilot published that "...Judge Luther C. Edmonds("Edmonds") maintains that the other Norfolk Circuit Court judges forced him out because he wouldn't go along with inconsistent standards for bail bondsmen. AMFJ, paragraph 28. The Pilot published that former Delegate William P. Robinson, Jr.("Robinson") stated "I know as a matter of fact, because I am privy to information... that there was an ethical violation. And that is the reason the judge resigned." AMFJ, paragraph 29.

On October 11, 1996, the Pilot published that Battle had consisting denied having a relationship with Edmonds while he was a sitting judge. AMFJ 31, 42. The Pilot consistently published that Edmonds consistently denied having a relationship with Battle

while he was a sitting judge. AMFJ, 30, 42. The Pilot was aware of Edmonds' testimonies under oath that he had no relationship with Battle while he was a sitting judge. AMFJ, 60, 61, 77, 78. Moreover, the defendants having a knowledge of Robinson's testimony under oath that he had no personal knowledge of any amorous relationship between Battle and Edmonds, while he was a sitting judge, the defendants on February 1, 2001 published that "The involvement of the plaintiff(Battle) with a sitting Circuit Court Judge at the time when that Judge was rendering decisions on cases in which the plaintiff(Battle) had a direct interest was at the time and remains a matter of legitimate public interest and concern especially when that involvement resulted in the Judge's resignation from the bench..." AMFJ, 83.

The defendants having knowledge that Robinson had no personal knowledge of any amorous relationship between Battle and Edmonds, while he

was a sitting judge, the defendants on February 25, 2002, republished that, "In a long public statement and interview, Robinson said Edmonds had committed an ethical violation in handling Battle's cases."

Notwithstanding the defendants having knowledge that Robinson had no personal knowledge of any amorous relationship between Battle and Edmonds, while he was a sitting judge, the defendants republished, a third time, on January 30, 2002: "Following Edmonds resignation, Robinson, a former close friend of Edmonds, announced that Edmonds was forced out because he had committed ' an ethical violation' by handling cases involving Battle. She was a bail bondswoman at the time and was allegedly having an affair with Edmonds.

The defendants' republication of Robinson's October 11, 1996 statement on January 30, 2002 was made with actual malice in that they had knowledge that Robinson's statement was false or they had a

reckless disregard of whether it was false or not. In spite of the defendants having knowledge that Robinson had no personal between Battle and Edmonds, the defendants while he was a sitting judge, the defendants republished the story.

A demurrer does not address, or allow the trial court to evaluate and decide the merits of a claim. Fun v. Virginia Military Inst., 442 S.E. 2d 77(1992); Exhibit B, Edmonds v. The Virginian-Pilot, Judge Daffron Ruling of October 7, 2002, p. 3. It only tests the sufficiency of the factual allegations of the motion for judgment to determine whether the motion for judgment states a cause of action. Id.

It is noteworthy that the same trial court in the companion case, Edmonds v. The Virginian-Pilot, based on the identical facts and law as this case, denied the defendants' demurrer with regard to republication of Robinson's statement on January 30,

2002. APPENDIX F, Luther C. Edmonds v. The Virginian-Pilot.

The August 2, 2002 editorial published by the Pilot are false in that "The campaign of Sherry White-Battle, 41, is plague by earlier business and personal incidents. For an example, in 1994, the one time bail bondwoman chased bondsman through a courthouse lobby with a stun gun; the disorderly conduct conviction stemming from the charge was later overturned by the state appeals court, ruling that she was not tried quickly enough. Voters should steer clear of her."(Emphasis added) Battle's campaign was not plagued by earlier business and personal incidents. The word "plague" means pestilence, affliction, or calamity, originally one of divine retribution. The American Heritage Dictionary 2nd ed.) 1982), p. 947. The Pilot covered Battle's campaign, and it published five (5) stories of her campaign for the 89th District seat for the House of Delegates AMFJ 107, Exhibit E. The stories clearly

reveal that neither Kenneth Alexander not Linda Horsey made an issue of Battle's business or personal incidents until The Virginian-Pilot published its editorial on August 2, 2002. AMFJ, 106, 107, and 108. Thus, the statement of August 2, 2002 editorial was false. A statement is defamatory if it "tends to injure the reputation of the party, to throw contumely, or to reflect shame and disgrace upon [the party] or to hold [the party] as an object of scorn, ridicule or contempt." Adams v. Lawson, supra. If a defamatory statement injures a person in his or her trade or profession, then the statement is actionable per se. Cawile v. Richmond Newspapers, 196 Va. 1, 9(1954). In order to render words defamatory and actionable it is necessary that the defamatory charge be in direct terms but it may be made indirectly, and it matter not how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory. Id. at 8. In case at bar. The defendants defamatory statements injure

Battle in her profession as a businesswoman and professional bail bondswoman. The defendants' publication to over 250,000 readers in Virginia and North Carolina that Battle's campaign was plagued with business and personal incident, "Like the 1994, incident mentioned in the August 2, 2002 editorial, tends to injure Battle's reputation, or to reflect shame and disgrace upon her or injure her in her profession as a businesswoman.

The defendants had conceded that the statements of August 2, 2002, which allegedly occurred in 1994, are based on specific fact. Demurrer, paragraph 3.

In the case at bar, the trial court and the Virginia Supreme Court's affirmance of the trial court's Order of October 20, 2003 conflicts with this Court's holding in New York Timesv. Sullivan, supra., in that it required public figure to have to prove malice. However, in New York Times v. Sullivan, this Court did not require that

actual malice be proven on a demurrer or motion to dismiss.

CONCLUSION

This case presents a question of exceptional importance-whether civil litigants have to prove actual malice by clear and convincing evidence, as defined in New York Times v. Sullivan, supra., on a demurrer or motion to dismiss.

If the opinion below is allowed, civil litigants would be denied a opportunity to prove malice before triers of facts

Accordingly, Battle respectfully that her petition for writ of certiorari be granted.

Respectfully submitted,

Sherry White-Battle, Pro se.

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(757) 622-2112

No. _____

In The Supreme Court of the United States

SHERRY D. BATTLE,

Petitioner,

v.

THE VIRGINIA - PILOT, A DIVISION OF LANDMARK COMMUNICATIONS, INCORPORATED KAY TUCKER ADDIS, and MARK DAVIS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Virginia

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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VIRGINIA: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 17th day of June, 2004.

Sherry D. Battle,
Appellant,

against Record No. 040162
Circuit Court No. L03-233

Virginian-Pilot, etc., et al.,

Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 14th day of April, 2004 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

/S/

Clerk

APPENDIX A

VIRGINIA: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 14th day of April, 2004.

Sherry D. Battle,
Appellant,

against Record No. 040162
Circuit Court No. L03-233

Virginian-Pilot, etc., et al.,

Appellees.

From the Circuit Court of the City of Norfolk

Upon review of the record in this case and consideration of the argument submitted in support of and in, opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Patricia H. Krueger, Clerk

By:
/S/

Deputy Clerk

APPENDIX B

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

SHERRY D. BATTLE,

Plaintiff,

v. AT LAW NO.: L03-233

THE VIRGINIAN-PILOT, A DIVISION OF LANDMARK COMMUNICATIONS, INC., KAY TUCKER ADDIS, and MARC DAVIS,

Defendants.

ORDER

THIS DAY CAME the parties, by counsel, upon the Demurrer, Motion to Dismiss, and Motion for Sanctions filed by the Defendants, upon the Motion to Stay and Reconsider filed by the Plaintiff and upon the memoranda and arguments.

WHEREUPON, after due consideration, the Court hereby SUSTAINS the Demurrer without leave to amend, GRANTS the Motion to Dismiss, and GRANTS the Motions for Sanctions and ORDERS that Sherry Battle shall pay $7,294.50 to the Defendants for reimbursement of attorneys fees and costs incurred in connection with this matter, which sum is to be paid within thirty(30) days from the date of this Order. Plaintiff's Motion to Stay and Reconsider is DENIED. The Court further ORDERS that this suit be and the same hereby is dismissed with prejudice.

The reasons for the Court's Order are more particularly set forth in the transcript of proceedings dated September 26, 2003, which is made a part hereof and incorporated herein by this reference. To all of which action of the Court, the Plaintiff duly objected and excepted for the grounds stated in oral argument and raised in her memorandum and in the Motion to Stay and Reconsider and all attachments thereto. The clerk is directed to mail certified copies of this order to the plaintiff, pro se., and to counsel for the defendants

Enter 10/20/2003

/S/

_____

Kenneth E. Trabue, Judge

APPENDIX C

WE ASK FOR THIS:

/S/

_____

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(757) 628-5500(telephone)

Counsel for Defendants

SEEN AND OBJECTED AND EXCEPTED AS NOTED:

_____

Ms. Sherry Battle
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